

Remarks

This is a full and timely response to the outstanding non-final Office action dated 06/19/2006. The Examiner has required the applicant to elect to prosecute one of four (4) groups of claims identified in the Office Action. In response to the restriction requirement, applicant respectfully elects to prosecute the claims of Group I corresponding to claims 1 – 19, with traverse, as set out hereafter.

First, in the interests of equity and fairness, applicant should be entitled to pursue different types of claims in the present application, particularly, apparatus claims and method claims, for the invention to fully protect the invention, because there is a different body of law pertaining to each of these different types of claims. The restriction requirement is therefore unfair to the applicant, because it will require the applicant to file and bear the additional cost and time delay associated with filing one or more divisional or continuing applications in order to cover each type of claim set. In view of this is, at least Group I and Group II should be examined together, and Group III and Group IV should be examined together.

Second, as provided in 35 U.S.C. § 121, restriction to one of two or more claimed inventions is proper only if the inventions are "independent and distinct." In its discussion of the propriety of restrictions, MPEP § 803 further provides that if search and examination of two or more inventions can be made without "serious burden," the Examiner must examine them on the merits even if the claims are directed to distinct or independent inventions.

In the present case, Groups I and III, although not obvious in view of each other, are very similar in subject matter. More specifically, each generally pertains to evaluation of a cross section/profile of an object. For this reason, applicant respectfully submits that

the inventions described in these claims are not "independent" as defined in MPEP § 803 and that the restriction requirement therefore is improper as between Groups I and III.

Further, it appears that a search for the apparatuses and methods of Groups I thru Group IV would be conducted within the *same class*. In such a situation, it clearly would not be overly burdensome on the Examiner to check for both of these "separate" inventions at the same time. Combined with the appropriateness of examination of the system of Group I along with the method of Group II, plus the appropriateness of examination of the system of Group III with the method of Group IV, it is clear that all Groups I – IV are best examined together.

For at least the foregoing reasons, applicant respectfully traverses the restriction requirement and respectfully requests the Examiner to examine the claims of Groups I, II, III and IV together. Alternatively, applicant respectfully requests the Examiner to examine the system claims of Group I along with the method claims of Group II.

Applicant expressly reserves the right to present the non-elected claims, or variants thereof, in continuing applications to be filed subsequent to the present application. Should the Examiner have any questions regarding this response, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,

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